

<div>CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</div> <div>STAFF REPORT</div>	Hearing Date/Agenda Number P.C. 4/9/03      Item 3.d.	
	File Number CP03-009	
	Application Type Conditional Use Permit	
	Council District 1	
	Planning Area West Valley	
	Assessor's Parcel Number(s) 299-31-023	
PROJECT DESCRIPTION		
Completed by: Darren McBain		
Location: Northwest corner of San Tomas Expressway and Williams Road		
Gross Acreage: 17.0      Net Acreage: 17.0      Net Density: n/a		
Existing Zoning: R-1-8 Residence      Existing Use: Utility facility (San José Water Company)		
Proposed Zoning: no change      Proposed Use: Same as above, plus two settling ponds and three storage bins for temporary storage of excavated soil, asphalt, concrete, and base rock		
GENERAL PLAN		
Completed by: DM		
Land Use/Transportation Diagram Designation Public/Quasi-Public		Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING		
Completed by: DM		
North: Single-family detached residences		R-1-8 Residence
East: San Tomas Expressway		County
South: Single-family detached residences (across Williams Road)		R-1-8 Residence
West: Single-family detached residences, multi-family attached residences, church		R-1-8 and RM Residence, A(PD) Planned Development
ENVIRONMENTAL STATUS		
Completed by: DM		
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on <input type="checkbox"/> Negative Declaration adopted on		<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete
FILE HISTORY		
Completed by: DM		
Annexation Title: Boynton No. 66		Date: August 1, 1980
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial <input type="checkbox"/> Uphold Director's Decision		Date: _____ Approved by: _____ <input checked="" type="checkbox"/> Action <input type="checkbox"/> Recommendation
OWNER/APPLICANT		
San José Water Company 1221-A South Bascom Avenue San José, CA 95128		

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**PUBLIC AGENCY COMMENTS RECEIVED**Completed by: **DM**

Department of Public Works

None Received

Other Departments and Agencies

None received.

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**GENERAL CORRESPONDENCE**

None received

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, San José Water Company, is requesting a Conditional Use Permit (CUP) to allow an addition to an existing utility facility located at the northwest corner of San Tomas Expressway and Williams Road. The Zoning Ordinance requires a CUP for utility facilities, or additions thereto, in the City's residential zoning districts. The site is a 17-acre parcel that includes a water tank and various other utility-related equipment, but is largely undeveloped. The site is flat and includes approximately 200 trees. The site is accessed from Williams Road. A CUP for the existing facilities on the site was approved in 1993 (File No. CP93-062). The proposed addition consists of two settling ponds and three storage bins for temporary storage of excavated soil, asphalt, concrete, and base rock (see the Project Description section, below).

Other nearby land uses include single-family detached homes to the north, San Tomas Expressway to the east, single-family detached homes across Williams Road to the south, and a mix of single-family homes, multi-family homes, and a church to the west of the site. It should be noted that the nearest residential property lines are approximately 300 to 400 feet away from the area of the site in which the addition is proposed.

**PROJECT DESCRIPTION**

The proposed addition consists of two 20' x 30', 2'6"-deep settling ponds and three 20'x 20', 5-foot-high storage bins. The ponds and bins are to be used for the temporary storage of soil, asphalt, concrete, and base rock. These materials will be transported to the site from various off-site locations where excavation takes place in the course of maintenance of the San José Water Company's system of water lines. The materials to be stored on the site are waterlogged when they are excavated and brought to the site. The purpose of the proposed addition is to provide a location for the materials to dry out before being transported to a landfill or quarry. For more information on the proposed operations, please refer to the written statement (attached) from the San José Water Company.

The proposed project also includes the creation of an unpaved maneuvering area for truck access to the bins and ponds, as shown on the plans. No new access points or on-site driveways are proposed. As noted above, the nearest residential property lines are approximately 300 to 400 feet away from the area of the site in which the addition is proposed.

The project includes removal of seven Eucalyptus trees, ranging in size from six inches to 30 inches in circumference. The removal of these trees is not considered a significant environmental impact or project issue. The applicant is proposing to plant approximately 20 new trees on the site, in order to provide screening and enhance the site's appearance. Approximately 195 to 200 existing trees will remain on the site.

## **ENVIRONMENTAL REVIEW**

The Director of Planning has determined that this project is exempt from environmental review under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA). CEQA Guidelines (Section 15301) include an exemption for minor additions to existing facilities. The Planning Director has determined that the proposed project adequately conforms to this section of the guidelines.

## **GENERAL PLAN CONFORMANCE**

The proposed land use (utility facility) is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Public/Quasi-Public.

## **ANALYSIS**

The primary issue analyzed for the proposed project is compatibility with nearby land uses. The overall 17-acre San José Water Company site is contiguous with numerous residential parcels. In discussions with Planning staff, the applicant has stated that materials would be transported to and from this site on a temporary, as-needed basis, when other facilities are not immediately available. One example would be when a leaking water main must be repaired in order to avoid jeopardizing a City- or County-maintained road or disrupting water service to the public.

The applicant has estimated that unloading of materials at the site may occur during late-night hours once every three months. However, it is staff's opinion that the distance from the nearby residences to the scope of work for this project (approximately 300 to 400 feet) will adequately buffer nearby residences from the otherwise potentially disruptive—though infrequent—activities associated with this proposal. This Conditional Use Permit includes a standard condition of approval (p. 7) that provides for potential revocation, suspension, or modification of the permit by the Planning Commission, should the proposed project become a nuisance at any time in the future. However, because this permit only allows limited-scale storage, Planning staff anticipates that truck unloading activities associated with this proposal will not be substantially disruptive to nearby residents.

The existing San José Water Company facility on the site includes a water tank, ponds, several wells, and other associated equipment. Most of the 17-acre site is in an undeveloped state; see attached photo of the existing site conditions. No Water Company staff members were present, and the existing site conditions generated no audible noise, when Planning staff visited the site. Given the low-intensity nature of the existing uses on the site, staff does not anticipate that the proposed minor addition will necessitate significant additional regulation or oversight of the on-site operations.

## CONCLUSION

The proposed project is consistent with the site's General Plan designation of Public/Quasi-Public and is not expected to have an adverse impact on nearby residences. It is staff's opinion that the proposal is consistent with the existing use of the site, will facilitate a public benefit, and is appropriate for this location.

## RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The project site is located on the northwest corner of San Tomas Expressway and Williams Road.
2. The site has a designation of Public/Quasi-Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The project site is located in the R-1-8 Residence Zoning District.
4. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
5. The site is developed with an existing public utility facility (San José Water Company), which has been in operation on the site since 1993.
6. The proposed project is an addition consisting of two settling ponds and three storage bins for the temporary storage of excavated soil, asphalt, concrete, and base rock.
7. The Zoning Ordinance requires a Conditional Use Permit for public utility facilities in the R-1-8 Residence Zoning District.
8. The proposed use does not include any request for administrative offices or other expansions of the existing on-site land uses other than the proposal described in this staff report.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit and Liquor License Exception Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

### CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
3. **Conformance with Plans.** Except as noted below, construction and development shall conform to approved Planned Development plans entitled "San José Water Company," dated March 19, 2003, on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code except as amended pursuant to other conditions of this permit. (San José Municipal Code, Title 17, Chapter 17.04).
4. **Revocation.** This Conditional Use Permit is subject to revocation for violation of any of its provisions or conditions.
5. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
6. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions or restrictions of this Planned Development Permit Amendment incorporated by reference in this Permit in accordance with Section 20.44.200 of the San José Municipal Code.
7. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
8. **Building Clearance for Issuing Permits.** This permit file number, CP03-009, shall be printed on all construction plans submitted to the Building Division.
9. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets.
10. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. This includes the

staging of equipment and construction personnel. Exceptions for landscaping activities and interior construction activities that do not involve the use of powered machinery and do not generate any audible noise level that can be perceived from an occupied dwelling unit on or off-site are permitted between the hours of 8:00 a.m. and 7:00 p.m. on Saturdays. The construction hours shall be printed on all plans for the project used to construct the project.

11. **Archaeology.** In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
12. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
13. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
14. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
15. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
16. **Compliance with Other Permits.** The developer shall comply with all terms and conditions of the previously approved Conditional Use Permit (File No. CP93-062).
17. **Limitation of Approved Uses.** This permit only allows an addition of two settling ponds and three storage bins for temporary storage of excavated soil, asphalt, concrete, and base rock. Any subsequent changes or expansions will require approval of a subsequent Conditional Use Permit or Conditional Use Permit Amendment.
18. **Hazardous Materials.** This permit does not approve the storage of contaminated soil as defined by the Department of Health Services.

## CONDITIONS SUBSEQUENT




1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the

Director of

Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

Attachments:

-  Written statement from applicant
-  Photos
-  Location map